Supreme Court, U.S.
FILED
DEC 4 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-428

In the Supreme Court of the United States

OCTOBER TERM, 1986

CUDD PRESSURE CONTROL, INC.
AND NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH,
PENNSYLVANIA, INC.

Petitioner

V.

WILLIAM MARTIN KINDLE
AND MURLINE KINDLE

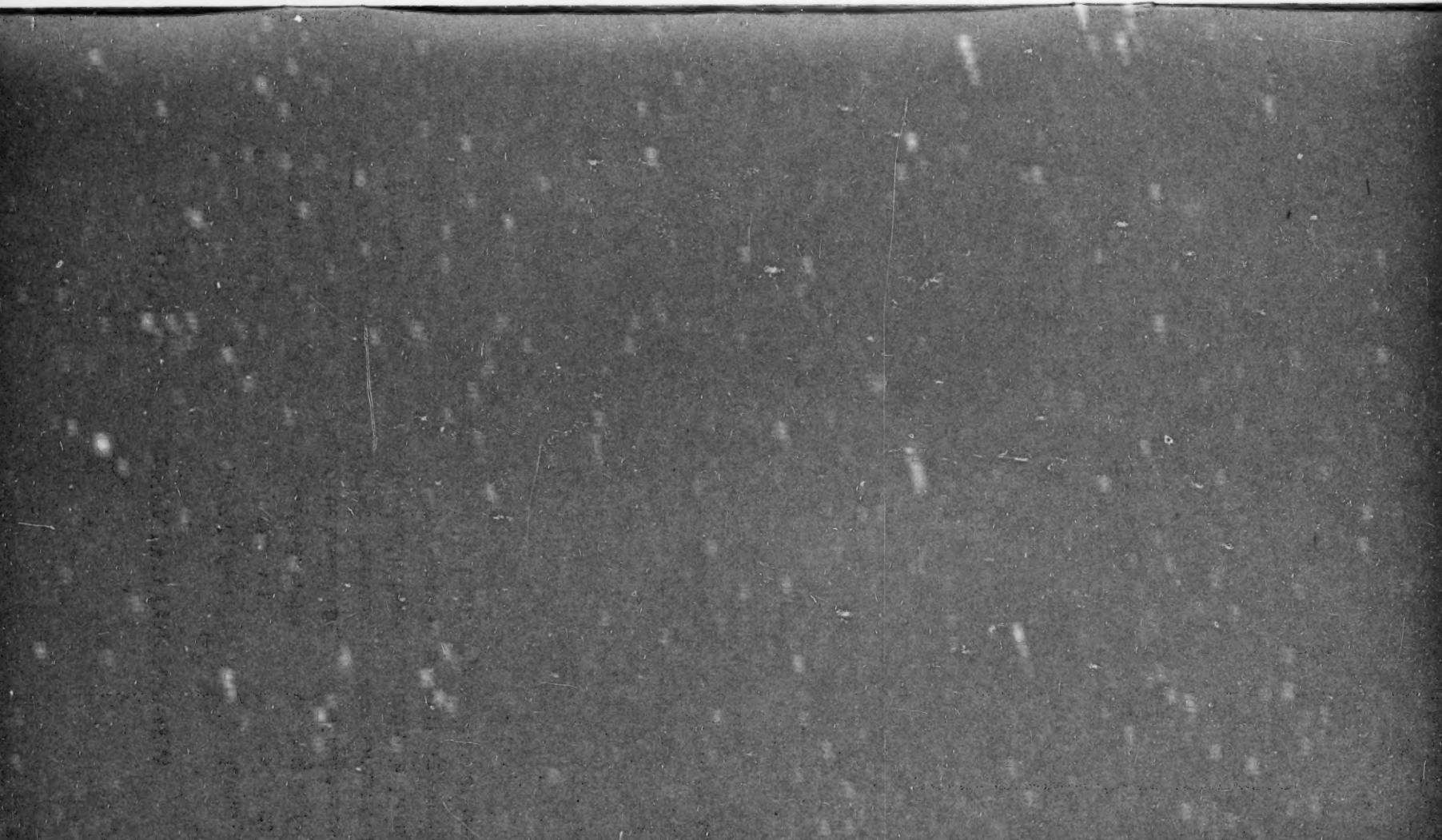
Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO APPLICATION FOR PETITION FOR WRIT OF CERTIORARI

JAMES R. DAWSON
Miller, Dawson & Askew
600 United Mercantile Bank Bldg.
Shreveport, Louisiana 71101
Telephone (318) 227-0541

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555



QUESTIONS PRESENTED FOR REVIEW

1. Whether, under the Full Faith and Credit clause of the United States Constitution, Art. IV, 1, a final judgment of Texas awarding death benefits to the estranged spouse of a deceased employee under the TEXAS Workers' Compensation Act should bar recovery by the parents of the decreased employee for death benefits under a Louisiana workers' compensation statute permitting such recovery only when there are no legal dependants of the deceased employer?

2. Whether Klaxon Co. v. Stentor Electric Mfg. Co., 313 US 487, 61 S.Ct. 1020, 85 L.E.D. 1477 (1941) requires a court, the jurisdiction of which is dependant upon diversity, to apply the conflict of laws principles of the forum state to a proceeding for the recovery of death benefits under the Louisiana Worker's Compensation Act?

LIST OF ALL PARTIES

All parties to this case appeart in the caption of the case before the Court. Paulette Kindle is not a party to these proceedings and no longer has an interest in the outcome since her right to seek worker's compensation benefits under Louisiana law has prescribed.

TABLE OF CONTENTS

PAGE

Questions Presented For Review.....i
List of All Parties.....ii
Table of Contents.....iii
Table of Authorities.....iv
Jurisdiction.....2
Statement of the Case.....2
Reasons why the Writ should be denied.....2
Conclusion.....7

TABLE OF AUTHORITIES

CASES: PAGE

Griffitts v. Tiger Well Service, Inc., 226 So. 2d 175 (La. App., 1969); *writ. denied*, 227 So. 2d 594.....4

Thomas v. Washington Gas Light Co., (1980) 448 US 261, 65 L. Wd. 2d 757, 100 S. Ct. 2647.....3

TABLE OF STATUTES

La. R.S. 23:1231.....4

La. R.S. 23:1251.....4

No. 86-428

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

CUDD PRESSURE CONTROL, INC.
AND NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH,
PENNSYLVANIA, INC.

Petitioner

V.

WILLIAM MARTIN KINDLE
AND MURLINE KINDLE

Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

**RESPONDENTS' BRIEF IN OPPOSITION
TO APPLICATION FOR PETITION
FOR WRIT OF CERTIORARI**

Respondents, William Martin Kindle and Murline Kindle, respectfully request that this Honorable Court deny the petition for writ of certiorari seeking review of the opinion of the United States Court of Appeals for the Fifth Circuit in this case. That opinion has been reported at 792 F. 2d 507 (C.A., 5th Cir., 1986).

The Original Opinion of the United States District Court, Western District of Louisiana, Monroe Division, is

not reported and was ordered stricken from the record by Order of the Court dated May 9, 1985. A Second Opinion of the United States District Court, Western District of Louisiana, Monroe Division, was rendered on May 9, 1985, and is reported at 608 F. Supp. 544 (D.C.,LA., 1985).

JURISDICTION

This Court's jurisdiction is founded on 28 U.S.C. 1254(1). The judgment of the Court of Appeals for the Fifth Circuit was entered on June 20, 1986.

STATEMENT OF THE CASE

The statement of facts by the Court of Appeals and provided by petitioners in their application to this Honorable Court is correct and is adopted by the respondents, William Martin Kindle and Murline Kindle, with the following exceptions.

Contrary to the assertions of petitioners the parents did not institute proceedings for benefits in Texas. Instead, they were brought into that action by petitioners. The respondent parents have never asserted that they were entitled to benefits under the Texas Worker's Compensation Act; they had no claim because of the existence of a surviving spouse.

REASONS WHY THIS WRIT SHOULD BE DENIED

Petitioners-Appellants have consistently sought to make the issues raised in this case more difficult than they actually are. The facts have been stipulated and the law is clear. The two lower courts have consistently recognized this.

Simply put, this is not a conflict of laws situation and there is no question as to the giving of full faith and credit to the Texas judgment finding the surviving spouse entitled to benefits under Texas law.

It has been long recognized that actions in worker's compensation may be brought in more than one state. See *Thomas v. Washington Gas Light Co.*, (1980) 448 US 261, 65 L.Ed. 2d 757, 100 S. Ct. 2647, and cases cited therein.

In this case, claims were made in two states: In Texas by the surviving spouse and in Louisiana by the decedent's parents. Neither had a claim in the other state for reasons more fully set forth below. The surviving spouse had no claim in Lousiana as she was separated from the decedent at the time of his death and not dependant upon him. The parents had no claim in Texas because of the existence of a surviving spouse not separated in excess of three (3) years.

The decision of the Texas courts as to the wife's entitlement is not in dispute and was never contested by the parents contrary to the assertions of the applications. It was the applicants who made the parents claimants in Texas. It was the applicants who sought and obtained a judgment of the Texas courts denying the parents benefits under the laws of that state.

In the Court of Appeals the applicants sought to equate the finding by the Texas court that the surviving spouse was entitled to benefits under Texas law to one finding that she was dependant, thus barring a claim by the parents in Louisiana. They have wisely abandoned that argument in this court.

Instead, what they seek is a ruling that the joining of conflict in Texas should amount to res judicata in Louisiana where the issues in question are entirely different even though they involve the same parties.

Louisiana law provides in La. R.S. 23:1231 for the payment of benefits in the event of the death of the employee within two (2) years of an accident. These benefits go to the legal dependents of the employee or, in the absence of legal dependents, to each surviving parent.

The surviving spouse living with the decendent at the time of death is by statute conclusively presumed to be dependent. La. R.S. 23:1251.

A spouse separated from the decendent at the time of death must show actual dependency. See, e.g., *Griffitts* v *Tiger Well Service, Inc.*, 226 So. 2d 175 (La. App., 3rd. Cir., 1969); writ denied, 227 So. 2d 594.

In this case, it was stipulated that the surviving spouse and the decendent were living separate at the time of his death. It was further stipulated that the surviving spouse was receiving no material or monetary support from the decedent.

The parents argued that as such, there was no legal dependent of the decedent and as stated above, the absence of a legal dependent entitled each parent to a lump sum payment, unless the result of the Teaxs proceeding was to find the surviving spouse dependent.

The Court of Appeals correctly found that the determination of death benefits entitlement in favor of the

surviving spouse in Texas and under Texas law did not equate to a finding of dependency, either by statute or by judicial interpretation.

Under Texas law the determination of death benefits is different from Louisiana. Texas law provides for a ranking of beneficiaries, dependency not being at issue.

The result of all this is to find as the parents have argued throughout these proceedings. Under Texas law, the surviving spouse is entitled to benefits in that state. Under Louisiana law, the parents are entitled to benefits in that state.

This finding is consistent with the intent and desire of both states, contrary to the argument of the applicants.

The only sensible and logical way this matter can be resolved is to recognize that we are dealing with different claimants with different rights under the laws of different states and that each claimant is entitled to be paid in accordance with those rights. No party is asking that the rights afforded any other party in one state be denied because of their own right in another. No one, that is except the applicant who would make this into a contest between the claimants.

To argue that because the applicants have been required to pay one claimant (the widow in Texas) they should not be required to pay another legitimate claimant in Lousisiana would be to say that had a Louisiana court awarded payment to the parents prior to the date of the award to the widow in Texas they would not have to pay her. This sort of race to the courthouse is not what was

envisioned by either state.

Likewise, had the payments to either been made voluntarily and such payment serve as a bar to payment to another legitimate claimant, then it would always behoove the defendants to pay the lessor claimant first thereby limiting their liability to the lessor of the amounts claimed. Again, this was not envisioned by either state.

What was envisioned by both states is that the claimants under their laws be paid. Texas envisioned and dictated that the claimants under its law be paid. Louisiana envisioned and dictated that the claimants under its law be paid. To require payment of benefits to the parent under Louisiana law would result in a situation dictated under Louisiana law. Applicants totally ignore the application of Louisiana law when they argue that the payment to the claimants would require them to respond for the death of the decedent in a manner not dictated by the law of either state.

When operating and doing business in Texas the applicants agreed to be bound by the laws of that state. When they came into Louisiana and operated there, they agreed to be bound by the laws of that state. Any obligations in Louisiana were in addition to the obligations imposed under Texas law. The applicants intended to profit by its choice of work sites; they should be obliged to pay by virtue of this choice.

CONCLUSION

The respondent parents respectfully request that this Honorable Court deny the writ of the applicants. The

findings of the lower courts in this matter have been consistent and in accord with the law. Where different parties have different rights under the laws of different states, there is no legal or otherwise logical reason to deny them those rights. To affirm the decisions of the lower courts in this case would not deny full faith and credit to the judgment of the Texas court. It would only be a correct application of the law to the facts in this case.

MILLER, DAWSON & ASKEW

BY:/s/James R. Dawson

James R. Dawson
600 United Mercantile Bank Bldg.
Shreveport, Louisiana 71101